IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.41895 of 2006
RAMESH CHANDRA PANDEY & ANR ---------- Petitioners
Versus
STATE OF BIHAR and ANR. ---------- Opp.parties
=====
For the petitioners: M/s Milan Mukherjee, Sudhir Singh, Sandipan Ganguly and Raghwanand
For the State : Mr. Jharkhandi Upadhaya
For the opp.party-2: Mr. Ashok Kr.Choudhary
=====

19 **9.5.2008** This is an application for quashing the First Information Report of Kahalgaon N.T.P.C. police station case no. 365/05 (G.R.no.2749/05) and all the proceedings emanating from the said FIR instituted by the informant Raju Khetan for the offences under sections 406, 420 and 120B/34 of the Indian Penal Code.

WEB COPY NOT OFFICIAL

The case of the informant, in short, as put in the FIR is that in the month of September, 2004 he had entered into a partnership agreement with accused Vijay Kumar Singh having equal share and thereafter partnership deed was executed between the two partners and the name of the firm was M/s Vijay Kumar Singh. The said firm obtained contracts with companies in NTPC premises like M/s L & T co., M/s Valecha and M/s Skanska. The informant had invested lacs of rupees through the firm. He

had also submitted a bank guarantee of UCO bank which was in the name of both the partners. The said firm had a bank account with State Bank of India, Branch- C, STPPSA branch, Kahalgaon bearing A/c no. 01050/060878 and the said account was operated jointly. After completion of the work, the bills were submitted to the above said three companies. It is said that except a cheque of Rs. 46,025/- issued by M/s Valecha, none of the other three companies had paid nor deposited any sum of money with the said bank account of the firm. The complainant had been reminding the accused Vijay Kumar Singh regarding dues of the firm and Vijay Kumar Singh had been assuring that he would collect the same. After some time the complainant came to know that Vijay Kumar Singh in collusion and concert with the three companies got the cheques issued in his personal name and deposited the amount to the tune of Rs. 11 lacs in his personal S.B.I. A/c bearing no. 01190/014634 maintained with SBI branch,CSTTPA, Kahalgaon and when the complainant asked Vijay Kumar Singh that he should deposit the said amount in the bank account of the firm, Vijay Kumar Singh refused to do so and abused and

WEB COPY NOT OFFICIAL

tried to assault him but the complainant somehow managed to escape and went to the police station and informed about the incident but no action was taken.

In the present application it is said that the petitioners are not named in the FIR. The entire allegation is directed against Vijay Kumar Singh though it is mentioned that the case is also against the officers of the companies who had issued the cheques. There is no corroborative evidence available on record to show that the petitioners have committed any offence. It is said that prior to filing of the instant FIR on the same facts the complainant had filed Complaint case no. 1532/05 on 24.6.2005 against the petitioners and others before the Chief Judicial Magistrate, Bhagalpur which was dismissed by a reasoned order that the parties have agreed to solve the dispute related to the firm by arbitrator. Against the said dismissal, the complainant had preferred Cr.Revision no. 277/05 before the learned Sessions Judge, Bhagalpur which was transferred to 1st Additional Sessions Judge, Bhagalpur for disposal. The revision was taken up for hearing on 11.9.2006 but no one appeared on behalf of

WEB COPY NOT OFFICIAL

the complainant to argue the matter. The revision was adjourned to 12.9.2006 and on that date a petition was filed on behalf of the complainant seeking permission of the court to withdraw the application. The withdrawal petition was not accepted on account of some technical ground and by order dated 14.9.2006 the revision was dismissed. It is said that the complainant did not utter a word with regard to said complaint case in the FIR of the instant case. Thus it is said that the present FIR is not maintainable in the eye of law and therefore, the same be quashed.

WEB COPY NOT OFFICIAL

Section 482 of the Code of Criminal Procedure (in short as the Code) does not confer any new power on the High Court. It envisages three circumstances under which the jurisdiction may be exercised namely; (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court, and (iii) to otherwise secure the ends of justice.

It is settled view that while exercising powers under this section, the Court does not function as a Court of appeal or revision. The inherent jurisdiction under the section is to be exercised to do real and

substantial justice for the administration of which alone Courts exist. In R.P.Kapur V/s the State of Punjab (AIR 1960 Supreme Court 866) the Apex Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or cointinuance e.g.want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails or prove the charge.

WEB COPY NOT OFFICIAL

In dealing with these category of cases it has to be kept in mind that while exercising jurisdiction under section 482 of the Code, the High Court would not embark upon an enquiry whether the evidence in question is reliable or not whether on a reasonable appreciation of it accusation would not be sustained.

Then in the State of Haryana V/s Bhajan

Lal (1990)4 S.C.650) the illustrative categories indicated by the Apex Court are as follows:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence

WEB COPY NOT OFFICIAL

but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently probable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

WEB COPY NOT OFFICIAL

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

It is thus settled view that the powers possessed by the High Court under section 482 of the Code are very wide and the very exercise of power requires great caution. Court must be careful to see that its decision in exercise of its power is based on sound principle. The court should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true prospective without sufficient material (see Zandu Pharmaceutical Works Ltd. v. Sharaful Haque (2005)1 C CrLR (Supreme Court) 23.

WEB COPY NOT OFFICIAL

From the allegations made in the FIR it appears that a partnership deed was entered into between the complainant and Vijay Kumar Singh on 4.2.2004 on the basis of which the firm named M/s Vijay Kumar Singh came into existence. The complainant was inducted as 50% partner of the

said firm. A bank guarantee was also submitted. Thereafter a joint account was opened by both the partners in the name of firm. The contract work was performed by the firm and contrary to the terms and conditions the firm named M/s L & T co. issued the cheque in the name of Vijay Kumar Singh, the individual partner.

Mr. Milan Kumar Mukherjee, advocate appearing on behalf of the petitioners vehemently argued that issuance of cheque in the name of Vijay kumar Singh, an individual partner, was made by L & T co. due to misrepresentation made by Vijay Kumar Singh, partner of opposite party no.2, and for which the officers of L & T co. cannot be held responsible. He argued that on the basis of allegations no case of criminal breach of trust or cheating is made out on the ground that in face of partnership every partner has dominion over the partnership property by reason of the fact that he is a partner. A partner has undefined ownership along with other partners over all assets of the partnership. If he choses to use any of them for his own purposes he may be accountable civilly to the other partner. In this connection he placed reliance on a decision

WEB COPY NOT OFFICIAL

of the Supreme Court reported in AIR 1965 SC 1433 given in the case of Velji Raghavji Patel v. State of Maharashtra. He thus pointed out that allegation under section 406 of the Penal Code cannot be levelled against one partner of a partnership firm by another in respect of the property of the partnership firm. The logic behind such legal theory is that the property of partnership firm is indefeasible in nature and all the partners are equal owners of the properties of the said partnership firm.

Mr. Mukherjee further argued that the abovementioned complaint case was dismissed on 25.8.2005 and when the complainant found that his mala fide intention was not going to be solved then on ill-adviced and for oblique reason he filed the FIR for the same offence. He argued that the present FIR is,therefore, not maintainable.

WEB COPY NOT OFFICIAL

On the other hand, learned counsel for opposite party no.2/informant argued that the petitioners are employees of M/s L & T which had entered into an agreement with the firm M/s Vijay Kumar Singh in which the informant was a partner. The informant along with Vijay Kumar Singh executed bank guarantee in favour of the

petitioners' firm but the petitioners in connivance with accused Vijay Kumar Singh made the payment to him with ulterior motive. He further contended that previous complaint case and revision were dismissed without going to the merit of the case. He contended that when the information is lodged at the police station and an offence is registered the alleged mala fide of the informant would be of a secondary importance. It is material collected during the investigation which shall decide the fate of the case. It is now admitted position that previous complaint case was dismissed on 25.8.2005 without going to the merit of the case. The revision preferred against the order dated 25.8.2005 was also dismissed without going to the merit of the case.

WEB COPY NOT OFFICIAL

In AIR 2003 SC 702 (Mahesh Chand v. B. Janardhan Reddy) it has been held that second complaint would not be completely barred. The second complaint could be dismissed after decision has been given against the complainant in a previous matter upon a full consideration of his case. As said above, the learned Chief Judicial Magistrate dismissed the previous complaint on the ground that the parties have

agreed to solve the dispute through an arbitrator. Therefore the previous complaint was not dismissed upon a full consideration of the matter of the case.

The Apex Court in the case of M/s Zandu Pharmaceutical Works Ltd. v. Sharaful Haque (supra) referred to a large number of precedence on the subject and observed that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the court. If the allegations contained in the FIR discloses commission of some crime then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter. In the light of the above principle at this stage I find that when entire facts are incomplete and hazy more

WEB COPY NOT OFFICIAL

so when the evidence has not been collected it would not be proper for this Court to analyse the case of the petitioner in the light of all the probabilities in order to determine whether a conviction would be sustainable or that there is no sufficient ground for proceeding against accused.

Such being the position at this stage no case for quashing the FIR is made out. The application is accordingly, dismissed.

The stay order granted by this Court by order dated 13.4.2007 is hereby vacated.

WEB COPY

(Madhavendra Saran,J.)

AI

NOT OFFICIAL